THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

Criminal Misc. Application No.863 of 2005

Sushil Kumar Saxena
S/o late Shiv Kumar Saxena
R/o180,New Four Story Building,DDA Flat
Vishal Enclaave,
Rajauri Garden,Dew Delhi.

Applicant

Versus

1. State of Uttaranchal.
2. Krishana Kumar Saxena
S/o late Parmesbhwari Dayal
Saxena'r/oHouse no. 202,Vivek ViharColony,Ranipur Mor,
Jawlapur, PS Jwalapur,
` District Haridwar.

Opposite party.

Hon'ble B.C.Kandpal, J

By way of this petition under Section 482 Cr.P.C. the petitioner who is facing trial before the court below under Section 138 of Negotiable Instruments Act, has prayd for quashing the order dated 11.11.2005 passed by First Additional Civil Judge (Jr.Div.) Haridwar in complaint case No. 785 of 2004 Krishan Kumar Saxena vs Sushil Kumar Saxena as well as the order passed by the learned Sessions Judge on 28.11. 2005 in Revision No. 342 of 2005 Sushil Kumar Saxena vs State.

Brief facts giving rise to this petition are that respondent No.2 Krishana Kumar Saxena filed a complaint case under Section 138 Negotiable Instruments Act against the petitioner. The learned court below after having perused the entire material placed before it, summoned the petitioner for facing the trial under Section 138 of Negotiable Instruments Act.

The prosecution placed its evidence before the trial court and the evidence of the prosecution was over. Thereafter the case was fixed for defence.

The petitioner thereafter moved an application under Section 311 Cr.P.C. for re-cross examination of the witnesses, PW 1 and PW 2.

The learned trial court after having considered the evidence on record was pleased to observe that the accused had sufficient opportunity to cross examine the witnesses at length and he availed all these opportunities of cross examining the witnesses at length. It has also been observed that the statement of the accused under Section 313 Cr.P.C. was also recorded and thereafter the case was fixed for defence evidence. It is again observed that the accused has been given several opprtunities to produce the defence evidence and at this stage this application is nothing but dilatory tactics. The learned court below with these observations rejected the application vide order dated 11.11. 2005.

The petitioner preferred a revision against the aforesaid order before the learned Sessions Judge who also dismissed the revision vide order dated 28.11.2005.

Feeling aggrieved against the aforesaid order, this petition has been preferred.

Heard, learned counsel for the petitioner, learned AGA and perused the record.

The petitioner has filed the copies of statement of PW 1 Krishan Kumar Saxena, P W 2 Kavita Saxena, PW 3 Bhola Nath Mishra.

Perusal of the statements of these witnesses show that the accused had sufficient opportunity to cross examine these witnesses and the witnesses have already been cross examined at length.

The application filed by the petitioner under Section 311 Cr.P.C. has also been annexed as Annexure 5 with this petition. Perusal of the application filed by the petitioner before the court below nowhere indicates that what are the material points on which the witnesses are to be re- cross examined. It was the duty of accused to have mentioned in the application as to what are the material points on

which the cross examination of the witnesses is needed and as to whether these points are relevant to arrive at a definite conclusion in this case.

It has been specifically observed in both the judgments passed by the learned court below that matter is already fixed for defence evidence and several adjournments have been granted to the petitioner to adduce the defence evidence but he has not adduced any evidence as yet.

The application filed by the petitioner without disclosing any point on which the cross examination is needed appears to be nothing but a dilatory tactic in order to linger on the proceedings pending before the court below.

I find myself in full agreement with the judgment and order passed by the learned court below.

I do not see any illegality, impropriety and incorrectness in the order passed by the learned court below.

I do not find any abuse of process of court. The petition lacks merit and is liable to be dismissed,

Accordingly the petition is dismissed.

(B.C.Kandpal,J)

5.12.2005
nbj